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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/833,314	04/10/2001	Christophe Dupont	112701-239	4353

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 11/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/833314

Applicant(s)

DUPONT ET AL

Examiner

S. WEINSTEIN

Group Art Unit

1761

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-17 is/are pending in the application.
- ☐ Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-17 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
 - ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 5
- ☐ Intervi w Summary, PTO-413
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over May et al (WO 98/05219) in view of Henkel (GB '634), Mandanas et al (WO 94/26606) and Routh ('901), further in view of applicant's admission of the prior art, McMahon (GB '351), Hillebrand et al (Australia 50797/96), Erras (EP 675046), QP Corp (Jp '677), QP Corp (Jp '174), Quaker Oats (GB '351), Bechtel ('847), May et al (WO '521) and Ohba (EP '252).

In regard to claim 1, May et al (WO 98/05219) discloses a canned pet food product having an upper end and a lower end, wherein the product comprises an outer phase which is substantially solid and which extends from the lower end to the upper end and which includes an edible source of carbohydrate and protein and an inner phase which extends from the lower end to the upper end and includes an edible source of carbohydrate and protein, the inner phase having an appearance different from the outer phase and extending within the outer phase. Note that May et al discloses that the phases or layers differ in appearance and texture (page 1, para. 1) and that the inner phase fills a recess in the outer phase that extends "entirely through" the base layer (page 9, col. 2) so that the inner phase will extend from the lower end to the upper end. Claim 1 recites that the outer phase is "tubular". Apparently, the definition of a tube is a hollow cylinder. The outer phase of May et al is hollow but apparently not tubular, being more frusto-conical. Thus, claim 1 appears to differ from May et al in the shape of the outer phase; i.e. cylindrical vs. frusto-conical. Once it is known to provide a package with two or more

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components in two or more different phases, the particular shape of the phases in the package is seen to have been an obvious matter of choice and/or design especially in view of the fact the art is replete with examples of varying cross sectional shapes of phases including tubular outer phases. The shape of the outer phase would also have been an obvious function of the particular conventional method of forming the two phases. Henkel is cited to show a multiphase package of viscous components which do not mix due to their viscosities and wherein the phases can be arranged in various patterns as a function of the conventional manner of filling including the use of one or more nozzles. One of the cross-sectional patterns, for example, shows a series of cylinders within an outer phase. Mandanas also teaches multiphased products packaged in a container wherein the phases are maintained separate due to their viscosities and wherein the phases can be given various cross-sectional patterns as a function of the method of filling the phases into the container. Among the various cross-sectional geometric patterns for the phases is provided by an outer tube and inner core(s). See e.g., fig. 10 in this regard. Note that Mandanas et al teaches the containers can be filled using a conventional coaxial filling nozzle (page 7, para. 1). Routh is another reference that teaches varying the cross-sectional patterns in a multi-phase product contained in a container. Note that the inner phase forms a cylindrical shape and is achieved by a filler placed near the bottom and moved upwardly through the outer phase as the inner phase is dispensed therein. To therefore modify the cross-sectional pattern of May et al and provide a tubular outer phase would have been obvious in view of the art taken as a whole teaching the conventionality of varying the cross-sectional patterns of multi-phase products as desired. McMahon, Hillebrand et al, Erras, the two QP Corp references, Quaker Oats, Bechtel, May et al (WO '521) and Ohba are all relied on as further evidence to show the art is replete with

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example of packaged multi-phase products wherein the phases assume various patterns. Note, too, although claim 1 does not say so, the phases in all the references maintain themselves without mixing primarily due to their viscosity which is substantially the same to prevent mixing or where one is much more viscous (even solid) compared to the other phase to prevent mixing. In regard to claim 2, how the phases were formed in the container is not seen to affect the final product. The final product is an outer tubular phase and an inner phase which can be made by several different techniques including providing a removable or dissolvable partition, prehardening, etc. Thus, even what conventional technique used to form the bore would have been obvious. Applicants' disclosed technique which includes a filler tube inserted into the product is taught by the art taken as a whole. This rejection applies to the method claims as well. In regard to claims 3, 4, 5 and 8, May et al ('219), along with applicants admission of the prior art, disclose thermally gelled pet food compositions and formulated emulsion pet food compositions are conventional and both teach combinations of both types of pet food compositions and May et al ('219) is considered to show the particular sequence or order recited. In regard to the dimensions of the can, although it is not clear if May et al ('219) meets the limitations of the can height being at least as large as its diameter, the art, taken as a whole, discloses this dimensional relationship is, of course, conventional. See e.g. McMahon and Quaker Oats and Bechtel. Applicants are requested to confirm if May et al teaches this relationship.

The references cited on the USPTO 892 form are cited as additional art of interest to show various composite foods.

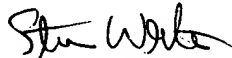
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Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is 703-308-0650. The examiner can generally be reached on Monday-Friday 7:00am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-0661.

S. Weinstein/mn
November 8, 2002


STEVE WEINSTEIN
PRIMARY EXAMINER 1761
11/13/02